

# **CHAPTER 7**

## **EMPLOYMENT**

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# CHAPTER 7

## ISSUES RELATED TO EMPLOYMENT

### Introduction

Each judge of a Circuit, Superior, Criminal, Probate or Juvenile court within a county has the authority to appoint and hire a court reporter. A court reporter is an employee at will of the court.

Prior to commencement of their duties, a court reporter must take an oath to faithfully perform the duties of their office and procure a bond as required for a notary public as well as an official seal. A court reporter has the authority to administer oaths and otherwise perform the duties of a notary public.

Duties, pay, work hours and conditions vary from court to court and county to county within the State of Indiana. Reporters may also provide administrative, personnel, and clerical services for the judge.

Current Indiana law provides that a court reporter shall receive compensation through a salary set by the court and appropriated by the County Council. By statute reporters are also entitled to separate compensation for transcripts of court proceedings requested by a party or members of the general public. Court reporters may also engage in “private practice” by reporting and transcribing depositions.

“Private practice” activities and transcript preparation pose a variety of issues for both the reporter and the court. These issues as well as the determination of the methods used for reporting are determined by the trial courts subject to the general supervision of the Indiana Supreme Court through Administrative Rule 15 and Trial Rule 74, set forth below.

### Local Court Rules Governing Court Reporter Services

#### Administrative Rule 15. Court Reporters

**A. Application of Rule.** All courts of record in each county of the State of Indiana shall adopt for approval by the Indiana Supreme Court a local rule by which all court reporter services shall be governed. Should a county fail to adopt such a plan, the Supreme Court shall prescribe a plan for use by the county. The local rule shall be in substantial compliance with the provisions of this rule.

**B. Definitions.** The following definitions shall apply under this administrative rule:

- (1) A **Court reporter** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
- (2) **Equipment** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
- (3) **Work space** means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.
- (5) **Recording** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
- (5) **Regular hours worked** means those hours which the court is regularly scheduled to work during any given workweek. Depending on the particular court, these hours may vary from court to court and county to county, but remain the same for each workweek.
- (6) **Gap hours worked** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
- (7) **Overtime hours worked** means those hours worked in excess of forty (40) hours per workweek.
- (8) **Work week** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
- (9) **Court** means the particular court for which the court reporter performs services. Depending upon the county, Court may also mean a group of courts i.e. "X County Courts".
- (10) **County indigent transcript** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (11) **State indigent transcript** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (12) **Private Transcript** means a transcript, including but not limited to a deposition transcript, that is paid for by a private party.

**C. Court Reporter Models.** The court or courts of each county shall uniformly adopt by local court rule one of the following Court Reporter Models:

(1) *Model Option One.* The local rule shall:

- (a) designate that a court reporter shall be paid an annual salary for time spent working under the control, direction and direct

supervision of the court during any regular work hours, gap hours or overtime hours;

(b) designate a per page fee for county indigent transcript preparation;

(c) designate that the court reporter shall submit directly to the county a claim for the preparation of the county indigent transcript;

(d) designate a maximum per page fee that the court reporter may charge for a state indigent transcript;

(e) designate a maximum per page fee that the court reporter may charge for a private transcript;

(f) require the court reporter to report at least on an annual basis to the Indiana Supreme Court Division of State Court Administration, on forms prescribed by the Division, all transcript fees (either county indigent, state indigent, or private) received by the court reporter;

(g) designate that if a court reporter elects to engage in private practice through recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, workspace and supplies, and the court agrees to the use of court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

(1) the reasonable market rate for the use of equipment, Workspace and supplies;

(2) the method by which records are to be kept for the use of equipment, work space and supplies;

(3) the method by which the court reporter is to reimburse the court for the use of the equipment, workspace and supplies;

(h) designate that if a court reporter elects to engage in private practice through recording a deposition and/or the preparing of a deposition transcript, that such private practice shall be conducted outside of regular working hours; and

(i) designate that the court shall enter into a written agreement with the court reporter which outlines the manner in which the court reporter is to be compensated for gap and overtime hours; i.e. either monetary compensation or compensatory time off regular work hours.

(2) *Model Option Two*. The local rule shall:

(a) designate that a court reporter shall be paid an annual salary for time spent working under the control, direction and direct supervision of the court during any regular work hours, gap hours or overtime hours;

(b) designate that subject to the approval of each county's fiscal body, the court shall set the amount of the annual salary;

(c) designate that the annual salary paid to the court reporter shall be for a fixed schedule of regular working hours;

(d) designate that a court reporter shall, if requested or ordered, prepare

any transcript during regular working hours;

(e) designate that in the event that preparing a transcript cannot be completed during regular hours worked, a court reporter shall be entitled to additional compensation beyond regular salary under one of the two options set forth as follows:

(1)

(a) Gap hours shall be paid in the amount equal to the hourly rate of the annual salary; and

(b) Overtime hours shall be paid in the amount of one and one-half (1-1/2) times the hourly rate of the annual salary; or,

(2)

(a) Compensatory time off from regular work hours shall be given in the amount equal to the number of gap hours worked; and

(b) Compensatory time off from regular work hours shall be given in the amount of one and one-half (1-1/2) times the number of overtime hours worked;

(f) designate that the court and each court reporter may freely negotiate between themselves as to which of the preceding two (2) options in (e) shall be utilized and that the court and court reporter shall enter into a written agreement designating the terms of such agreement;

(g) designate that if a court reporter elects to engage in private practice through recording a deposition and/or preparing a deposition transcript, that such private practice shall be conducted outside of regular working hours;

(h) designate that if a court reporter elects to engage in private practice through recording a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, workspace and supplies, and the court agrees to the use of court equipment for such purposes, the court and the court reporter shall enter into a written agreement which must at a minimum designate the following:

(1) the reasonable market rate for the use of equipment, work space and supplies;

(2) the method by which records are to be kept for the use of equipment, workspace and supplies;

(3) the method by which the court reporter is to reimburse the court for the use of the equipment, workspace and supplies.

(i) designate a maximum per page fee that a court reporter may charge for private practice work;

(j) designate a maximum per page fee that the court reporter may charge for a private transcript; and

(k) require the court reporter to report at least on an annual basis to the State Court Administrator all transcript fees (either county indigent, state indigent or private) received by the court reporter.

(3) *Model Option Three.* The court(s) may, by adopting a local rule to that effect, elect to procure all court reporter services by private contract and

submit such contract for approval by the Indiana Supreme Court in accordance with Section A of this rule. Any such procedure must conform to all applicable state and local statutes, rules and regulations.

### **Guidelines Concerning Fees**

In December, 2001, the Indiana Supreme Court implemented guidelines for increased charges under local rules for court reporting services adopted pursuant to Administrative Rule 15. The guidelines provide:

1. Rate increases of up to \$0.50 per page of any existing page rate are justifiable based upon the increased work product obligations (of the Appellate Rules).
2. A minimum fee up to \$35.00 per transcript is permissible.
3. Index and Table of Contents pages should be charged at the per page rate being charged for the rest of the transcript.
4. An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and the exhibit binders.
5. A reasonable charge for the office supplies required and utilized for the binding and electronic transmission of the transcript, pursuant to Indiana Rules of Appellate Procedure 28 and 29, is permissible; the costs for these supplies should be determined pursuant to a Schedule of Transcript Supplies which should be established and published annually by the judge or judges of the county.

Any request for approval of increased fees should be accompanied by information specifying the changes, which have occurred justifying an increase in fees.

Per page fees for transcripts and private practice work established by local rules may not be implemented until approved by the Indiana Supreme Court.

### **Trial Rule Provisions Regarding Method of Reporting and Other Responsibilities**

#### **Rule 74. Recording machines; court reports; stenographic report or transcript as evidence**

(A) **Recording machines - Transcripts.** For the purpose of facilitating and expediting the trial of causes and the appeals there from, the judge of each circuit, criminal, superior, probate and juvenile court of each and every county of this state may arrange and provide for the recording by electronic or mechanical device, or by stenographic reporting with computer-aided transcription capability of, any and all oral evidence and testimony given in all causes and hearings, including both questions and answers, and all rulings of the judge in respect to the admission and rejection of evidence and objections thereto and the recording of any other

oral matters occurring during the hearing in any proceeding. The recording device or the computer aided transcription equipment shall be selected and approved by the court and may be placed under the supervision and operation of the official court reporter or such other person as may be designated by the court. The court may, in its discretion, eliminate shorthand or stenographic reporting of any recorded matter. A transcript, typewritten or in longhand, made in part or entirely from such recording, shall serve the same purpose as if made from shorthand notes and if certified, as in the case of a transcript of shorthand notes, shall serve the same purpose and be as valid as if made from shorthand notes. Provided further, that the judge may authorize or direct the court reporter or any other responsible, competent person, in his discretion, to make a transcription from such recordings, and the same shall be certified by the person making said transcriptions in the same manner and have the same effect as if made from shorthand notes.

**(B) Reporter may serve as clerk and serve other judges.** When the circuit court judge and the judge or judges affected find that such duties will not affect the efficiency of the court, one [1] person may serve both as a court reporter and clerk for a judge or judges whose regular courtroom is located outside the courthouse or its environs; and a court reporter may serve more than one [1] judge. Appointment shall be made by the judge or judges affected and, if they cannot agree, by the circuit court judge.

**(C) Pay and duties of court reporters.** It shall be the duty of each court reporter whenever required by the judge, to be promptly present in court, and take down in shorthand or by other means the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge in respect to the admission and rejection of evidence and the objections and exceptions thereto, and write out the instructions of the court in jury trials. The court reporter, when so directed, shall record the proceedings and make a transcript as provided in subdivision (A) of this rule. Reporters shall be paid as provided by 1965 Indiana Acts, ch. 289[IC 33-15-26-1 to 33-15-26-9], but the circuit court judge with the approval of the judge or judges affected may allow the reporter additional pay up to \$125 per month for serving more than one [1] judge or function, or serving as both clerk and reporter.

**(D) Statutes applicable to reporters and preparation of transcripts.** Except as provided otherwise by these rules, the provisions of 1899 Indiana Acts, ch. 169, §§ 2-7,[ IC 33-15-23-2 to 33-15-23-5.] 1939 Indiana Acts, ch. 11, §§ 1,[ IC 33-15-24-1] 1935 Indiana Acts, ch. 218, §§ 1,[ IC 4-22-4-1.] 1893 Indiana Acts, ch. 33 §§ 1,[ IC 33-1-4-1] and 1947 Indiana Acts, ch. 89, §§ 1,[ IC 33-15-25-1 [Repealed]] relating to court reporters and preparation of transcripts, shall apply to court reporters provided by these rules.



**(E) Stenographic report or transcript as evidence.** Whenever the testimony of a witness at a trial or hearing, which was stenographically reported, is admissible on appeal or in evidence at a later trial, proceeding, or administrative hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

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